

AMENDED IN ASSEMBLY MARCH 28, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2304**

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**Introduced by Assembly Member Sharon Runner**  
*(Coauthors: Assembly Members Bogh, Cogdill, DeVore, Harman, Shirley Horton, Huff, La Suer, Mountjoy, Parra, Spitzer, and Wyland)*

February 22, 2006

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An act to amend Sections 11165.7 and 11166 of the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 2304, as amended, Sharon Runner. Crime.

Existing law identifies specified persons as mandated reporters who must submit a report to law enforcement whenever in their professional capacity or within the scope of their employment, they have knowledge of or observe a child whom he or she knows or reasonably suspects has been the victim of child abuse or neglect, including commercial film and photographic print processors.

This bill would expand this list of persons identified as mandated reporters to include commercial computer technicians, as defined.

Existing law requires any commercial film and photographic print processor who has knowledge of or observes in his or her professional capacity or employment any film, photograph, videotape, negative, or slide depicting a child under 16 years of age engaging in an act of sexual conduct to report the instance of suspected child abuse to a law enforcement agency, as specified.

This bill would expand these provisions to include commercial computer technicians and computer files and recordings, as specified,

*and instead requires that he or she report any depiction of a child who appears to be under 16 years of age being subject to, or involved in, sexual abuse.*

Because this bill would increase the duties of local officials, and because a violation of these provisions would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 11165.7 of the Penal Code is amended
- 2 to read:
- 3 11165.7. (a) As used in this article, “mandated reporter” is
- 4 defined as any of the following:
- 5 (1) A teacher.
- 6 (2) An instructional aide.
- 7 (3) A teacher’s aide or teacher’s assistant employed by any
- 8 public or private school.
- 9 (4) A classified employee of any public school.
- 10 (5) An administrative officer or supervisor of child welfare
- 11 and attendance, or a certificated pupil personnel employee of any
- 12 public or private school.
- 13 (6) An administrator of a public or private day camp.
- 14 (7) An administrator or employee of a public or private youth
- 15 center, youth recreation program, or youth organization.
- 16 (8) An administrator or employee of a public or private
- 17 organization whose duties require direct contact and supervision
- 18 of children.

1 (9) Any employee of a county office of education or the  
2 California Department of Education, whose duties bring the  
3 employee into contact with children on a regular basis.

4 (10) A licensee, an administrator, or an employee of a licensed  
5 community care or child day care facility.

6 (11) A Head Start program teacher.

7 (12) A licensing worker or licensing evaluator employed by a  
8 licensing agency as defined in Section 11165.11.

9 (13) A public assistance worker.

10 (14) An employee of a child care institution, including, but not  
11 limited to, foster parents, group home personnel, and personnel  
12 of residential care facilities.

13 (15) A social worker, probation officer, or parole officer.

14 (16) An employee of a school district police or security  
15 department.

16 (17) Any person who is an administrator or presenter of, or a  
17 counselor in, a child abuse prevention program in any public or  
18 private school.

19 (18) A district attorney investigator, inspector, or local child  
20 support agency caseworker unless the investigator, inspector, or  
21 caseworker is working with an attorney appointed pursuant to  
22 Section 317 of the Welfare and Institutions Code to represent a  
23 minor.

24 (19) A peace officer, as defined in Chapter 4.5 (commencing  
25 with Section 830) of Title 3 of Part 2, who is not otherwise  
26 described in this section.

27 (20) A firefighter, except for volunteer firefighters.

28 (21) A physician, surgeon, psychiatrist, psychologist, dentist,  
29 resident, intern, podiatrist, chiropractor, licensed nurse, dental  
30 hygienist, optometrist, marriage, family and child counselor,  
31 clinical social worker, or any other person who is currently  
32 licensed under Division 2 (commencing with Section 500) of the  
33 Business and Professions Code.

34 (22) Any emergency medical technician I or II, paramedic, or  
35 other person certified pursuant to Division 2.5 (commencing with  
36 Section 1797) of the Health and Safety Code.

37 (23) A psychological assistant registered pursuant to Section  
38 2913 of the Business and Professions Code.

1 (24) A marriage, family, and child therapist trainee, as defined  
2 in subdivision (c) of Section 4980.03 of the Business and  
3 Professions Code.

4 (25) An unlicensed marriage, family, and child therapist intern  
5 registered under Section 4980.44 of the Business and Professions  
6 Code.

7 (26) A state or county public health employee who treats a  
8 minor for venereal disease or any other condition.

9 (27) A coroner.

10 (28) A medical examiner, or any other person who performs  
11 autopsies.

12 (29) A commercial film and photographic print processor or  
13 commercial computer technician, as specified in subdivision (e)  
14 of Section 11166. As used in this article, “commercial film and  
15 photographic print processor” means any person who develops  
16 exposed photographic film into negatives, slides, or prints, or  
17 who makes prints from negatives or slides, for compensation.  
18 The term includes any employee of such a person; it does not  
19 include a person who develops film or makes prints for a public  
20 agency. As used in this article, “commercial computer  
21 technician” means any person who repairs, installs, or otherwise  
22 services any computer including, but not limited to, any  
23 component part, device, memory storage or recording  
24 mechanism, auxiliary storage recording or memory capacity, or  
25 any other materials relating to the operation and maintenance of  
26 a computer or computer network or system for compensation.  
27 The term also includes any employee of such a person.

28 (30) A child visitation monitor. As used in this article, “child  
29 visitation monitor” means any person who, for financial  
30 compensation, acts as monitor of a visit between a child and any  
31 other person when the monitoring of that visit has been ordered  
32 by a court of law.

33 (31) An animal control officer or humane society officer. For  
34 the purposes of this article, the following terms have the  
35 following meanings:

36 (A) “Animal control officer” means any person employed by a  
37 city, county, or city and county for the purpose of enforcing  
38 animal control laws or regulations.

39 (B) “Humane society officer” means any person appointed or  
40 employed by a public or private entity as a humane officer who is

1 qualified pursuant to Section 14502 or 14503 of the Corporations  
2 Code.

3 (32) A clergy member, as specified in subdivision (c) of  
4 Section 11166. As used in this article, “clergy member” means a  
5 priest, minister, rabbi, religious practitioner, or similar  
6 functionary of a church, temple, or recognized denomination or  
7 organization.

8 (33) Any custodian of records of a clergy member, as  
9 specified in this section and subdivision (c) of Section 11166.

10 (34) Any employee of any police department, county sheriff’s  
11 department, county probation department, or county welfare  
12 department.

13 (35) An employee or volunteer of a Court Appointed Special  
14 Advocate program, as defined in Rule 1424 of the California  
15 Rules of Court.

16 (36) A custodial officer as defined in Section 831.5.

17 (37) Any person providing services to a minor child under  
18 Section 12300 or 12300.1 of the Welfare and Institutions Code.

19 (b) Except as provided in paragraph (35) of subdivision (a),  
20 volunteers of public or private organizations whose duties require  
21 direct contact with and supervision of children are not mandated  
22 reporters but are encouraged to obtain training in the  
23 identification and reporting of child abuse and neglect and are  
24 further encouraged to report known or suspected instances of  
25 child abuse or neglect to an agency specified in Section 11165.9.

26 (c) Employers are strongly encouraged to provide their  
27 employees who are mandated reporters with training in the duties  
28 imposed by this article. This training shall include training in  
29 child abuse and neglect identification and training in child abuse  
30 and neglect reporting. Whether or not employers provide their  
31 employees with training in child abuse and neglect identification  
32 and reporting, the employers shall provide their employees who  
33 are mandated reporters with the statement required pursuant to  
34 subdivision (a) of Section 11166.5.

35 (d) School districts that do not train their employees specified  
36 in subdivision (a) in the duties of mandated reporters under the  
37 child abuse reporting laws shall report to the State Department of  
38 Education the reasons why this training is not provided.

1 (e) Unless otherwise specifically provided, the absence of  
2 training shall not excuse a mandated reporter from the duties  
3 imposed by this article.

4 (f) Public and private organizations are encouraged to provide  
5 their volunteers whose duties require direct contact with and  
6 supervision of children with training in the identification and  
7 reporting of child abuse and neglect.

8 SEC. 2. Section 11166 of the Penal Code is amended to read:

9 11166. (a) Except as provided in subdivision (d), a mandated  
10 reporter shall make a report to an agency specified in Section  
11 11165.9 whenever the mandated reporter, in his or her  
12 professional capacity or within the scope of his or her  
13 employment, has knowledge of or observes a child whom the  
14 mandated reporter knows or reasonably suspects has been the  
15 victim of child abuse or neglect. The mandated reporter shall  
16 make an initial report to the agency immediately or as soon as is  
17 practicably possible by telephone and the mandated reporter shall  
18 prepare and send, fax, or electronically transmit a written  
19 followup report thereof within 36 hours of receiving the  
20 information concerning the incident. The mandated reporter may  
21 include with the report any nonprivileged documentary evidence  
22 the mandated reporter possesses relating to the incident.

23 (1) For the purposes of this article, “reasonable suspicion”  
24 means that it is objectively reasonable for a person to entertain a  
25 suspicion, based upon facts that could cause a reasonable person  
26 in a like position, drawing, when appropriate, on his or her  
27 training and experience, to suspect child abuse or neglect. For the  
28 purpose of this article, the pregnancy of a minor does not, in and  
29 of itself, constitute a basis for a reasonable suspicion of sexual  
30 abuse.

31 (2) The agency shall be notified and a report shall be prepared  
32 and sent, faxed, or electronically transmitted even if the child has  
33 expired, regardless of whether or not the possible abuse was a  
34 factor contributing to the death, and even if suspected child abuse  
35 was discovered during an autopsy.

36 (3) Any report made by a mandated reporter pursuant to this  
37 section shall be known as a mandated report.

38 (b) If after reasonable efforts a mandated reporter is unable to  
39 submit an initial report by telephone, he or she shall immediately  
40 or as soon as is practicably possible, by fax or electronic

1 transmission, make a one-time automated written report on the  
2 form prescribed by the Department of Justice, and shall also be  
3 available to respond to a telephone followup call by the agency  
4 with which he or she filed the report. A mandated reporter who  
5 files a one-time automated written report because he or she was  
6 unable to submit an initial report by telephone is not required to  
7 submit a written followup report.

8 (1) The one-time automated written report form prescribed by  
9 the Department of Justice shall be clearly identifiable so that it is  
10 not mistaken for a standard written followup report. In addition,  
11 the automated one-time report shall contain a section that allows  
12 the mandated reporter to state the reason the initial telephone call  
13 was not able to be completed. The reason for the submission of  
14 the one-time automated written report in lieu of the procedure  
15 prescribed in subdivision (a) shall be captured in the Child  
16 Welfare Services/Case Management System (CWS/CMS). The  
17 department shall work with stakeholders to modify reporting  
18 forms and the CWS/CMS as is necessary to accommodate the  
19 changes enacted by these provisions.

20 (2) This subdivision shall not become operative until the  
21 CWS/CMS is updated to capture the information prescribed in  
22 this subdivision.

23 (3) This subdivision shall become inoperative three years after  
24 this subdivision becomes operative or on January 1, 2009, which  
25 ever occurs first.

26 (4) On the inoperative date of these provisions, a report shall  
27 be submitted to the counties and the Legislature by the  
28 Department of Social Services that reflects the data collected  
29 from automated one-time reports indicating the reasons stated as  
30 to why the automated one-time report was filed in lieu of the  
31 initial telephone report.

32 (5) Nothing in this section shall supersede the requirement that  
33 a mandated reporter first attempt to make a report via telephone,  
34 or that agencies specified in Section 11165.9 accept reports from  
35 mandated reporters and other persons as required.

36 (c) Any mandated reporter who fails to report an incident of  
37 known or reasonably suspected child abuse or neglect as required  
38 by this section is guilty of a misdemeanor punishable by up to six  
39 months confinement in a county jail or by a fine of one thousand  
40 dollars (\$1,000) or by both that imprisonment and fine. If a

1 mandated reporter intentionally conceals his or her failure to  
2 report an incident known by the mandated reporter to be abuse or  
3 severe neglect under this section, the failure to report is a  
4 continuing offense until an agency specified in Section 11165.9  
5 discovers the offense.

6 (d) (1) A clergy member who acquires knowledge or a  
7 reasonable suspicion of child abuse or neglect during a  
8 penitential communication is not subject to subdivision (a). For  
9 the purposes of this subdivision, “penitential communication”  
10 means a communication, intended to be in confidence, including,  
11 but not limited to, a sacramental confession, made to a clergy  
12 member who, in the course of the discipline or practice of his or  
13 her church, denomination, or organization, is authorized or  
14 accustomed to hear those communications, and under the  
15 discipline, tenets, customs, or practices of his or her church,  
16 denomination, or organization, has a duty to keep those  
17 communications secret.

18 (2) Nothing in this subdivision shall be construed to modify or  
19 limit a clergy member’s duty to report known or suspected child  
20 abuse or neglect when the clergy member is acting in some other  
21 capacity that would otherwise make the clergy member a  
22 mandated reporter.

23 (3) (A) On or before January 1, 2004, a clergy member or any  
24 custodian of records for the clergy member may report to an  
25 agency specified in Section 11165.9 that the clergy member or  
26 any custodian of records for the clergy member, prior to January  
27 1, 1997, in his or her professional capacity or within the scope of  
28 his or her employment, other than during a penitential  
29 communication, acquired knowledge or had a reasonable  
30 suspicion that a child had been the victim of sexual abuse that the  
31 clergy member or any custodian of records for the clergy  
32 member did not previously report the abuse to an agency  
33 specified in Section 11165.9. The provisions of Section 11172  
34 shall apply to all reports made pursuant to this paragraph.

35 (B) This paragraph shall apply even if the victim of the known  
36 or suspected abuse has reached the age of majority by the time  
37 the required report is made.

38 (C) The local law enforcement agency shall have jurisdiction  
39 to investigate any report of child abuse made pursuant to this



paragraph even if the report is made after the victim has reached the age of majority.

(e) Any commercial film and photographic print processor or commercial computer technician who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide, or any computer file, recording, CD-ROM, magnetic disk memory, magnetic tape memory, picture, graphic or image that is intentionally saved, transmitted or organized on hardware or any other media including, but not limited to, CD, DVD, and thumbdrive, whether by digital, analog, or other means and whether directly viewable compressed or encoded depicting a ~~child under the age of 16 years engaged in an act of sexual conduct, as defined in subdivision (d) of Section 311.4 who appears to be under 16 years of age being subject to, or involved in, sexual abuse~~, shall report the instance of suspected ~~child abuse or child pornography abuse~~ to a local, state, or federal law enforcement agency located in the county in which the images are seen immediately, or as soon as practicably possible, by telephone and shall prepare and send, fax, or electronically transmit a written report of it with a copy of the material attached, within 36 hours of receiving the information concerning the incident. ~~As used in this subdivision, "sexual conduct" means any of the following:~~

~~(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.~~

~~(2) Penetration of the vagina or rectum by any object.~~

~~(3) Masturbation for the purpose of sexual stimulation of the viewer.~~

~~(4) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer.~~

~~(5) Exhibition of the genitals, pubic, or rectal areas of any person for the purpose of sexual stimulation of the viewer.~~

(f) Any mandated reporter who knows or reasonably suspects that the home or institution in which a child resides is unsuitable for the child because of abuse or neglect of the child shall bring the condition to the attention of the agency to which, and at the same time as, he or she makes a report of the abuse or neglect pursuant to subdivision (a).

1 (g) Any other person who has knowledge of or observes a  
2 child whom he or she knows or reasonably suspects has been a  
3 victim of child abuse or neglect may report the known or  
4 suspected instance of child abuse or neglect to an agency  
5 specified in Section 11165.9.

6 (h) When two or more persons, who are required to report,  
7 jointly have knowledge of a known or suspected instance of child  
8 abuse or neglect, and when there is agreement among them, the  
9 telephone report may be made by a member of the team selected  
10 by mutual agreement and a single report may be made and signed  
11 by the selected member of the reporting team. Any member who  
12 has knowledge that the member designated to report has failed to  
13 do so shall thereafter make the report.

14 (i) (1) The reporting duties under this section are individual,  
15 and no supervisor or administrator may impede or inhibit the  
16 reporting duties, and no person making a report shall be subject  
17 to any sanction for making the report. However, internal  
18 procedures to facilitate reporting and apprise supervisors and  
19 administrators of reports may be established provided that they  
20 are not inconsistent with this article.

21 (2) The internal procedures shall not require any employee  
22 required to make reports pursuant to this article to disclose his or  
23 her identity to the employer.

24 (3) Reporting the information regarding a case of possible  
25 child abuse or neglect to an employer, supervisor, school  
26 principal, school counselor, coworker, or other person shall not  
27 be a substitute for making a mandated report to an agency  
28 specified in Section 11165.9.

29 (j) A county probation or welfare department shall  
30 immediately, or as soon as practicably possible, report by  
31 telephone, fax, or electronic transmission to the law enforcement  
32 agency having jurisdiction over the case, to the agency given the  
33 responsibility for investigation of cases under Section 300 of the  
34 Welfare and Institutions Code, and to the district attorney's  
35 office every known or suspected instance of child abuse or  
36 neglect, as defined in Section 11165.6, except acts or omissions  
37 coming within subdivision (b) of Section 11165.2, or reports  
38 made pursuant to Section 11165.13 based on risk to a child  
39 which relates solely to the inability of the parent to provide the  
40 child with regular care due to the parent's substance abuse, which

1 shall be reported only to the county welfare or probation  
2 department. A county probation or welfare department also shall  
3 send, fax, or electronically transmit a written report thereof  
4 within 36 hours of receiving the information concerning the  
5 incident to any agency to which it makes a telephone report  
6 under this subdivision.

7 (k) A law enforcement agency shall immediately, or as soon as  
8 practicably possible, report by telephone, fax, or electronic  
9 transmission to the agency given responsibility for investigation  
10 of cases under Section 300 of the Welfare and Institutions Code  
11 and to the district attorney's office every known or suspected  
12 instance of child abuse or neglect reported to it, except acts or  
13 omissions coming within subdivision (b) of Section 11165.2,  
14 which shall be reported only to the county welfare or probation  
15 department. A law enforcement agency shall report to the county  
16 welfare or probation department every known or suspected  
17 instance of child abuse or neglect reported to it which is alleged  
18 to have occurred as a result of the action of a person responsible  
19 for the child's welfare, or as the result of the failure of a person  
20 responsible for the child's welfare to adequately protect the  
21 minor from abuse when the person responsible for the child's  
22 welfare knew or reasonably should have known that the minor  
23 was in danger of abuse. A law enforcement agency also shall  
24 send, fax, or electronically transmit a written report thereof  
25 within 36 hours of receiving the information concerning the  
26 incident to any agency to which it makes a telephone report  
27 under this subdivision.

28 SEC. 3. No reimbursement is required by this act pursuant to  
29 Section 6 of Article XIII B of the California Constitution for  
30 certain costs that may be incurred by a local agency or school  
31 district because, in that regard, this act creates a new crime or  
32 infraction, eliminates a crime or infraction, or changes the  
33 penalty for a crime or infraction, within the meaning of Section  
34 17556 of the Government Code, or changes the definition of a  
35 crime within the meaning of Section 6 of Article XIII B of the  
36 California Constitution.

37 However, if the Commission on State Mandates determines  
38 that this act contains other costs mandated by the state,  
39 reimbursement to local agencies and school districts for those

1 costs shall be made pursuant to Part 7 (commencing with Section  
2 17500) of Division 4 of Title 2 of the Government Code.

O